

ORIGINAL

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

3 CIVIL ACTION NO. 1:11-cv-00054-LG-RHW

4 DAVID MARQUAR

PLAINTIFF

5 VS.

6 OFFICER CHRIS ALLEN, individually and in
7 his official capacity as a duly
8 commissioned Police Officer for the City
9 of Waveland, MS; POLICE CHIEF JAMES A.
10 VARNELL, individually and in his official
11 capacity as a duly commissioned Police
12 Officer for the City of Waveland, MS;
13 DAVID GARCIA, individually and in his
14 official capacity as Mayor of The City of
15 Waveland, MS; CITY OF WAVELAND, UNKNOWN
16 JOHN AND JANE DOES A - Z

DEFENDANTS

12 DEPOSITION OF DAVID KEITH MARQUAR

14 Taken at Phelps Dunbar, LLP, NorthCourt One,
15 Suite 300, 2304 19th Street, Gulfport,
16 Mississippi, on June 21, 2012, beginning at
17 2:31 p.m.

18 REPRESENTING THE PLAINTIFF:

19 BOBBY MOAK, ESQUIRE
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23 REPRESENTING THE DEFENDANTS:

24 WILLIAM BRETT HARVEY, ESQUIRE
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29 REPORTED BY:

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EXHIBIT

1

1 THE WITNESS: Bobby, I don't want to
2 argue.

3 MR. MOAK: Just --

4 A. But I did not, I have not, paid one
5 penny on one of these fines.

6 BY MR. HARVEY:

7 Q. Okay.

8 A. Every police -- just about every police,
9 the chief, the mayor, my neighbor is a police, and
10 not one time has anyone came and said, David, you
11 owe this.

12 Q. Okay. Did you ever file an appeal of
13 this conviction of resisting arrest or disturbing
14 the peace?

15 A. No, sir.

16 Q. Okay. So you never sought to have it
17 overturned; is that right?

18 A. Didn't have to.

19 Q. Okay. Well, that's your opinion; right?

20 A. (Nodding head affirmatively).

21 Q. I'm just asking you factual questions.

22 A. Yes, sir. Yes, sir. And I'm being
23 truthful, like you asked me to.

24 Q. Let's be fair. I understand. I'm not
25 asking for your legal opinion, so you don't have

1 to give it to me. But you've never filed an
2 appeal; right?

3 A. No, sir.

4 Q. You've never tried to have your record
5 expunged; right?

6 A. What do you mean?

7 Q. Well, that's -- if you don't know what
8 it means, then you probably didn't do it.

9 A. Okay.

10 Q. Okay. As far as you know, you didn't
11 try to have your record expunged; is that right?

12 A. Whatever "expunged" means.

13 Q. That's fine. Well, as far as you know,
14 you didn't do anything to make a guilty verdict go
15 away, be overturned, be vacated; is that right?

16 A. Right.

17 Q. Okay. Fair enough. You don't dispute
18 that you were charged with resisting arrest and
19 disturbing the peace, do you?

20 A. Yes.

21 Q. You dispute that you were charged with
22 that?

23 A. Yes.

24 Q. Why do you dispute that?

25 A. First of all, disturbing the peace, I

1 us. The night of my court that my attorney was
2 with me, the judge would not make a ruling.

3 Q. Okay. Did you know whether the judge
4 made a ruling later?

5 A. No.

6 Q. You just don't know one way or the
7 other, do you?

8 A. Except reading the newspaper.

9 Q. Okay. But other than reading hearsay in
10 the newspaper, which can be wrong, you don't know
11 what the judge ultimately held, do you?

12 A. No, sir.

13 Q. Okay. Fair enough. These charges of
14 resisting arrest and disturbing the peace, they
15 stemmed from the events that night when you got
16 tased, don't they?

17 A. Yes, sir.

18 Q. Right. So I'm not asking you to agree
19 that they have merit or anything. I'm just asking
20 you agree that the charges came from the events at
21 the Superbowl party where you got tased as opposed
22 to some other event; right?

23 A. Yes.

24 Q. Okay. Good.

25 MR. HARVEY: Let's mark this as Exhibit

1 Q. I don't know how to pronounce it, but
2 it's --

3 A. Mauffray.

4 Q. Mauffray?

5 A. Yes, sir.

6 Q. And did he indicate to you that you
7 needed to file a lawsuit in this case?

8 A. That night?

9 Q. Right.

10 A. No, sir.

11 Q. Did he say anything to you that night?

12 A. I didn't even see him.

13 Q. Okay. Fair enough. All right. Well,
14 with that, then, let's talk about how the incident
15 occurred on the night of February 7th, 2010.

16 First of all, just to make sure we're on the same
17 page, you agree with me that your tasing and
18 arrest occurred at the Superbowl party on
19 February 7, 2010; right?

20 A. Right.

21 Q. And it was somewhere around 7:00 or 7:30
22 in the evening; right?

23 A. Yes.

24 Q. Tell me how this party was set up. In
25 other words, tell me the layout of it. Was it all

1 on your property? Was it on someone else's
2 property? How did that work?

3 A. Okay. I know you said be short, but I'm
4 going to be truthful. What it was, we started
5 that morning -- we started the day before getting
6 everything ready and everything for the party.

7 Q. Okay.

8 A. We had the party. We planned it in my
9 poolhouse. Had about 25 people. My son, who
10 lives over from me, he planned his. We cooked all
11 kinds of food. And when the game came on, we all
12 sat down and started watching it.

13 Q. Okay.

14 A. It was on my property at 1100 Longo
15 Street. There was no complaints of nothing there.

16 Q. Well, okay. And is 1100 Longo Street
17 adjacent to 600 Turner Street?

18 A. The way the land is, yes, it would be.

19 Q. In other words, the two properties touch
20 each other?

21 A. Yes.

22 Q. And 600 Turner Street is your son's
23 address?

24 A. Yes.

25 Q. And is that Kendall?

1 A. Yes.

2 Q. Are there any fences or gates or
3 anything between them?

4 A. There's a fencepost right at the corner
5 of my land with a shed.

6 Q. With a what?

7 A. With a little woodshed that my neighbor
8 has, my other neighbor has.

9 Q. All right. Now, you own the poolhouse;
10 is that right?

11 A. Yes, sir, that's right.

12 Q. How many people did y'all invite to your
13 party?

14 A. I'm going to say 25 was there, but you
15 have that --

16 Q. I was going to say, how many people
17 showed up?

18 A. I would say close to the whole 25, you
19 know. At certain times they were going from my
20 son's to, you know, the poolhouse.

21 Q. Well, how many people would you say, if
22 you had to estimate, were at -- the two parties
23 combined, how many people total were at the two
24 parties combined?

25 A. I'd say 40.

1 A. Cans of beer and fifths of whiskey.

2 Q. Okay.

3 A. If they wanted to drink.

4 Q. Okay. Now, what had you had to drink
5 that day?

6 A. Crown and Diet Coke.

7 Q. Crown and Coke?

8 A. That night, Crown and Diet Coke.

9 Q. How many?

10 A. Diet Coke.

11 Q. How many?

12 A. Let's say six. It started at 6:00. The
13 game started at 7:00. I'd say four.

14 Q. Four Crown and Cokes?

15 A. Yes, sir.

16 Q. Since the game started?

17 A. Yes, sir.

18 Q. That's impressive.

19 MR. MOAK: Object.

20 BY MR. HARVEY:

21 Q. Did you observe other people drinking at
22 the party?

23 A. No, sir, not while the game was on.

24 Q. Okay. Well, at any point did you
25 observe anyone else drinking at the party?

1 Q. Sure.

2 A. At that time he told me, he said, Hey,
3 you're going to have to keep the noise down. I
4 said, I'm telling you again -- and before I could
5 say anything, my wife walked up and said, Hey, we
6 didn't know you're a police. You have stripes on
7 your pants and you have a gun on. Now, what do
8 you want? He said, Y'all are making too much
9 noise.

10 Q. Is it a good idea to ask a police
11 officer what they want?

12 A. What do you mean, ask him what he wants?
13 I didn't ask him what he wants.

14 Q. Is that a courteous way to speak to a
15 police officer?

16 A. I don't follow what you mean.

17 Q. Fair enough. So at that point after the
18 Saints had made a first down, you had become aware
19 that Chris Allen is a police officer; is that
20 right?

21 A. My wife, by my wife.

22 Q. Okay. But you knew it at that point;
23 right?

24 A. Right. Then, yes.

25 Q. Okay. Then what happened?

1 A. Then my wife said, Okay. I have it
2 under control. You can leave.

3 Q. Okay.

4 A. He walked out of my poolhouse door. I
5 don't know where he went. My wife said, Okay.
6 We'll turn it down and be quiet. I said, Why?
7 We're not making no noise. I walked out of my
8 door, walked into my poolhouse. I went back
9 inside and we were sitting there.

10 Q. Let's slow down a little bit. You're
11 going pretty fast. So your wife tells Officer
12 Allen that you've got things under control.

13 A. She does.

14 Q. That she's got things under control.

15 A. We'll turn the noise down, that he could
16 leave.

17 Q. And she says we'll turn the noise down
18 and that he could leave?

19 A. Right.

20 Q. Okay. And he goes out of the poolhouse.

21 A. Right.

22 Q. And you don't know where he went at that
23 point.

24 A. No, sir.

25 Q. Okay. Now, at that point, what did you

1 do?

2 A. I walked out of my poolhouse and my
3 wife -- me and my wife was talking. It was
4 halftime.

5 Q. Why did you walk out of your poolhouse?

6 A. Because I was going to go inside my
7 house and watch the rest of the game because I
8 couldn't sit there and enjoy it because I can't
9 hear very well and I've got to turn it up to hear.
10 And she said, Well, come on. We'll turn it up
11 just a little bit. He left. I went back
12 inside --

13 Q. Okay. So just to be clear, at this
14 point you walked outside of your poolhouse and you
15 told your wife that you were going to just go in
16 the house because you wanted to be able to hear
17 the game; is that right?

18 A. That's right.

19 Q. And your wife said, Well, let's just
20 turn the game up here in the poolhouse because the
21 police are gone. Is that right?

22 A. Right.

23 Q. So she actually suggested doing the
24 opposite of what she told the police she would do.

25 A. She had turned it up loud enough where I

1 could hear.

2 Q. Right. After telling the police that
3 she would turn it down.

4 A. And we were going -- we did turn it
5 down.

6 Q. But then you turned it back up.

7 A. No, we did not.

8 Q. I'm just trying to understand. My
9 understanding is you had turned it down after --
10 well, you tell me.

11 A. He wasn't complaining about the TV.

12 Q. Okay.

13 A. He was complaining about the noise.

14 Q. Okay. I see. So your wife never told
15 him that she would turn the TV down.

16 A. She told him she had it under control.
17 She'd keep everybody down.

18 Q. In other words, she'd just keep the
19 noise down generally.

20 A. Right.

21 Q. So you guys, after he has walked out of
22 the poolhouse, you walk out of the poolhouse with
23 your wife; is that right?

24 A. Right.

25 Q. Where specifically outside the

1 poolhouse? I mean, how far outside the door?

2 A. Three feet.

3 Q. Thirty feet?

4 A. Three feet.

5 Q. Three feet. So obviously still on your
6 property.

7 A. Yes.

8 Q. Okay. And you say you want to go in the
9 house and she says, Well, no. Stay out here.
10 We'll turn the volume up on the TV.

11 A. No. She didn't say turn the volume up.
12 She said we'll keep everything quiet where you can
13 hear.

14 Q. We'll keep everything quiet where you
15 can hear. Okay. I appreciate that. I appreciate
16 that. And then what happened?

17 A. And then when I got back in, I sat down.
18 We started watching TV. Halftime was coming on.
19 I went to the bathroom, to the back of my
20 poolhouse. I went to the bathroom. When I came
21 back, I turned around and looked. My door swung
22 open. It was bang.

23 Q. The door to the poolhouse swung open?

24 A. Swung open. He shot me. No questions
25 asked or nothing.

1 Q. So you're claiming that you were coming
2 out of the bathroom?

3 A. That's right.

4 Q. And a police officer, without
5 provocation, just opened the door and shot you
6 with a TASER for no reason?

7 A. Right.

8 Q. So I want to make sure we're clear on
9 this. You're --

10 A. Right.

11 Q. Hold on. Your testimony is that you did
12 not resist arrest in any way; is that right?

13 A. Right.

14 Q. Good.

15 A. And P.J. Murphy is a witness. He was
16 standing outside when he saw it all.

17 Q. Hold on because I want to get this.
18 Your testimony is that you did not resist
19 verbally; is that right?

20 A. Right.

21 Q. You did not resist physically?

22 A. Right.

23 Q. You did not resist in any way; is that
24 right?

25 A. Right.

1 Q. Okay. Good.

2 MR. HARVEY: Let's go off the record for
3 a second.

4 OFF RECORD)

5 BY MR. HARVEY:

6 Q. Okay. I just want to lay out a few
7 points about just what your version of events is.
8 You just said that you did not resist verbally or
9 physically; correct?

10 A. No, sir.

11 Q. At any point during this whole
12 altercation; right?

13 A. No, sir.

14 Q. So it was not a situation where you
15 might have resisted a little at some point either
16 before or after the tasing. You're saying from
17 the beginning of the Superbowl party to the time
18 you went to the hospital, you never resisted
19 arrest; right?

20 A. No, sir.

21 Q. Not once.

22 A. No, sir.

23 Q. Is that right? Am I -- in other
24 words --

25 A. You are correct. I never resisted

1 arrest; never was told I was under arrest.

2 Q. Not verbally?

3 A. No, sir.

4 Q. And not physically?

5 A. No, sir. Well, physically is when he
6 put the handcuffs on me, apparently.

7 Q. But you didn't resist when he put the
8 handcuffs on you, did you?

9 A. I was knocked out.

10 Q. Okay.

11 A. I was out cold as a wedge.

12 Q. I just wanted to make sure that I
13 understand. I appreciate that.

14 Okay. So let's recap what just
15 happened. You say you had gone to the bathroom
16 during halftime; is that right?

17 A. Right.

18 Q. And you stepped out of the door to the
19 bathroom.

20 A. No. No. From my bathroom to where I
21 sit is probably ten, maybe 15 feet.

22 Q. Okay.

23 A. I come out the bathroom. You've got to
24 pass my door to get back to the bar. When I came
25 out, when I got to the door, to my door, I was

1 know if anybody was talking to him?

2 A. Not that I know of, no, sir.

3 Q. Do you know one way or the other?

4 A. No, sir.

5 Q. So you wouldn't know if someone had been
6 say, yelling or heckling or threatening him, would
7 you?

8 A. No, sir.

9 Q. But your contention is that you didn't
10 say anything like that.

11 A. No, sir.

12 Q. And to be clear, your contention is that
13 you did not step outside the poolhouse just before
14 being tased; is that right?

15 A. Correct.

16 Q. And did he try to grab you with his hand
17 or restrain you in any way before he tased you?

18 A. No, sir, he did not.

19 Q. Therefore, did you pull away from him
20 before he tased you?

21 A. No, sir, I did not.

22 Q. Okay. So at this point you're saying
23 that you have been hit with the TASER and you feel
24 like you're sort of knocked out; right?

25 A. I don't feel like it. I was.

1 Q. Okay.

2 A. I didn't know nothing until I got in the
3 ambulance.

4 Q. That's fine. So you don't remember
5 anything between that time and when you got in the
6 ambulance?

7 A. That's right.

8 Q. So I could sit here and ask you about
9 moving you across the yards and over to the
10 ambulance in the parking lot and you just wouldn't
11 know anything about it; right?

12 A. Truthfully, right.

13 Q. And when we get to trial you still won't
14 know anything about it?

15 A. Not unless I lie and I won't do that.

16 Q. Okay. Good. Well, if you don't know
17 anything about what happened after that, I'm not
18 going to ask you about it.

19 A. No, sir.

20 Q. Who, remind me, is Joseph Dedeaux?

21 A. That was a friend -- well, he's a family
22 friend, plus he was Chris' friend.

23 Q. How is he a family friend? How does
24 your family know him?

25 A. We've been knowing the Dedeauxes. You

1 other?

2 A. No, sir. Only thing I said, excuse the
3 language, is get your ass out of my poolhouse.

4 Q. Okay.

5 A. For you and Joey to bring y'all's asses
6 back over to Kendall's.

7 Q. Okay. Fair enough. And forgive my
8 language, but did you say get the fuck off of my
9 property?

10 A. No, sir, I did not.

11 Q. Okay. Do you recall being told you were
12 under arrest?

13 A. No, sir, never was.

14 Q. Okay.

15 A. As long -- up until I was tased, I was
16 never told I was under arrest. After I was tased
17 until I got in the ambulance, they could have told
18 me anything.

19 Q. Well, okay. I tell you what: You said
20 you didn't remember anything until you got into
21 the ambulance. Tell me what you remember -- next
22 thing that you remember when you got in the
23 ambulance.

24 A. I got in the ambulance and Officer
25 Necaise, I asked him if he would ride with me,

1 A. No, sir.

2 Q. Okay. How clear is your memory of the
3 time at the hospital? Were you completely lucid
4 or were things still kind of fuzzy?

5 A. I was, I guess, feeling better when I
6 got the shot.

7 Q. Well, would you say that your memory of
8 that time is as clear as your memory is generally,
9 or is it still a little fuzzier than normal?

10 A. I'd probably say it's clear.

11 Q. Okay. Did you ever say to anybody in
12 the hospital that you were okay? You just wanted
13 a Crown and Coke?

14 A. Yes, I did.

15 Q. Okay. Fair enough. And do you remember
16 standing up when the Saints got that last
17 interception and dancing and yelling, Who Dat?

18 A. Yes, sir, I did.

19 Q. Okay.

20 MR. HARVEY: Mark this as Exhibit 6.

21 - - -

22 (Exhibit Number 6 marked)

23 BY MR. HARVEY:

24 Q. If you'll look at the upper right-hand
25 corner, the date is February 7, 2010, and it is,

1 that you mention in the lawsuit is the idea of
2 equal protection. Equal protection generally
3 refers to the government not discriminating on the
4 basis of things like race and age and sex and
5 things like that. You understand?

6 A. (Nodding head affirmatively).

7 Q. Do you contend that you were tased
8 because of any protected status you have, like
9 your age or your race, or was it just because an
10 officer was too eager to use his TASER?

11 A. Too eager to use his TASER.

12 Q. Okay. So it wasn't because of any kind
13 of discrimination, was it?

14 A. No.

15 Q. Your complaint also mentions due
16 process. Were you ever actually taken to the
17 station and booked?

18 A. No, sir.

19 Q. Were you ever actually placed in a cell?

20 A. No, sir.

21 Q. Do you contend that the city of Waveland
22 or any of the defendants did anything wrong in the
23 way that they processed your case after the events
24 occurred? In other words, I understand you
25 disagree with the tasing, but do you think that

1 the officers or the prosecutor or anyone violated
2 any procedural rules in how they handled your
3 case?

4 A. I still don't understand what you're
5 getting to.

6 Q. Well, can you point to any point in your
7 case where you think, other than the tasing itself
8 and taking you to the hospital and all that, where
9 Waveland did something wrong in how it processed
10 your case?

11 A. Well, I guess not. Now, well, after --
12 well, they -- I guess they could have been
13 trained.

14 Q. What's that?

15 A. They could have been trained how to use
16 the gun.

17 Q. And we'll talk about that in a second.
18 I'm just asking the procedural handling of your
19 case and your prosecution, did they do anything
20 wrong in that phase of handling your case that you
21 know of?

22 A. Yeah. They could have been man enough
23 to come to my house and tell me I was charged.

24 Q. Okay. Other than that, did they do
25 anything wrong in how they handled the procedures

1 in your case?

2 A. No, sir.

3 Q. Okay. If you'll look at paragraph 27,
4 and really it's all throughout the complaint, you
5 mention the policies and the procedures of the
6 City of Waveland.

7 A. Yes, sir.

8 Q. Okay. Do you know what the policies of
9 the City of Waveland are with respect to using
10 TASERS?

11 A. No, sir.

12 Q. And do you know who sets the policy for
13 the City of Waveland on using TASERS?

14 A. No, sir.

15 Q. If you'll flip over, Count II is on page
16 10, and it talks about a conspiracy to interfere
17 with civil rights. Do you see that?

18 A. Uh-huh.

19 Q. What evidence do you have that anyone at
20 the Waveland Police Department ever conspired
21 together to harm you?

22 A. Because they had no right in my house.
23 They had no right on my property. They had no
24 rights on my house. There was no complaint at my
25 house. There was -- on and on. The thing boils

1 down to he had no reason on my property.

2 Q. Do you understand what I mean when I say
3 "conspiracy"? Let me just tell you. A conspiracy
4 generally is when more than one person gets
5 together and communicates or agrees to do
6 something to someone else. You understand? Now,
7 I know you contend that Officer Allen shouldn't
8 have been on your property. That's not my
9 question. My question is what evidence do you
10 have that people at the City of Waveland, other
11 than Officer Allen, got together and conspired or
12 communicated in an effort to harm you?

13 A. None.

14 Q. Okay. And then on a related point, if
15 you'll just flip over on Count III, it's on page
16 12. It says, Action for neglect or failure to
17 prevent conspiracy. Do you see that?

18 A. Uh-huh.

19 Q. And it talks about James Varnell. You
20 know, he's the police chief; right?

21 A. Right.

22 Q. Or he was, at least. Do you know
23 whether James Varnell knew of any conspiracy
24 against you?

25 A. I don't know.

1 look at A, it says battery. Battery means causing
2 an offensive contact with somebody's person. I
3 just want to make sure I understand. Earlier you
4 said your version is that you never resisted
5 arrest verbally or physically at any point; right?

6 A. Right.

7 Q. Okay. And to be clear, you're not
8 contending that you were resisting at one point
9 and then stopped, are you?

10 A. No, sir.

11 Q. You're saying you never did it at all.

12 A. No, sir, never did.

13 Q. Okay. Let's flip over to page 18. Look
14 at E, negligent and intentional infliction of
15 emotional distress. What evidence do you have
16 that Officer Allen intended to cause you emotional
17 distress?

18 A. Because he shot me. He tased me for no
19 reason.

20 Q. Okay. So other than firing the TASER,
21 what evidence do you have that he intended to
22 cause you emotional distress?

23 A. None.

24 Q. Look over on page 19 --

25 A. Yes, sir.

1 A. Yes.

2 Q. Okay. It's talk about some of the
3 individual defendants that you've named.
4 Obviously I understand what your claim is against
5 Chris Allen. What did James Varnell do to harm
6 you?

7 A. What did he do to harm me?

8 Q. Right.

9 A. Well, I feel like being the chief of
10 police, he could have came and, you know, looked
11 into the case to try and find out what happened
12 and everything.

13 Q. Did you ever file a complaint with Chief
14 Varnell?

15 A. No.

16 Q. Okay. Do you know what, if any,
17 internal investigation or discussions took place
18 regarding your tasing?

19 A. No.

20 Q. Okay. And was James Varnell present at
21 the scene when you were tased?

22 A. No.

23 Q. Do you know who David Garcia is?

24 A. Yes.

25 Q. Who is he?

1 A. The mayor of Waveland.

2 Q. Was he the mayor of Waveland when you
3 were tased?

4 A. No, sir.

5 Q. Has he done anything to harm you?

6 A. No, sir.

7 MR. HARVEY: That is all I have.

8 THE WITNESS: Raised my taxes.

9 MR. HARVEY: Well --

10 MR. MOAK: Let me ask a few real quick.

11 - - -

12 **EXAMINATION**

13 BY MR. MOAK:

14 Q. Let's go back to his Exhibit 5. It will
15 be this one right here.

16 MR. HARVEY: Sure.

17 BY MR. MOAK:

18 Q. That's it. And there was a question
19 raised about declining medical attention.

20 A. Yes.

21 Q. Look specifically to the second page,
22 and there you declined a flu shot. Is that
23 correct? That's what that is, influenza vaccine?

24 MR. HARVEY: Can I see? (Counsel
25 examines document.) All right.